

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Douglas A. Bulleit et al.

Application No.: 10/652,815

Filed: August 29, 2003

For: METHODS, SYSTEMS, AND COMPUTER PROGRAM PRODUCTS FOR
ALLOCATING COSTS IN USING A BROADBAND COMMUNICATION NETWORK

Confirmation No.: 2478

Group Art Unit: 3627

Examiner: Luna Champagne

Date: April 28, 2008

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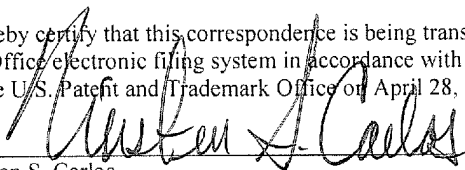
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Kirsten S. Carlos

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APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. §41.37

Sir:

This Appeal Brief is filed pursuant to the "Notice of Appeal to the Board of Patent Appeals and Interferences" filed February 26, 2008 and the "Notice of Panel Decision from Pre-Appeal Brief Review" mailed March 5, 2008.

Real Party In Interest

The real party in interest is assignee AT&T BLS Intellectual Property, Inc., formerly known as BellSouth Intellectual Property Corporation, Wilmington, Delaware.

Related Appeals and Interferences

Appellants are aware of no appeals or interferences that would be affected by the present appeal.

Status of Claims

Appellants appeal the rejection of Claims 1 – 40, which are currently pending. Appellants submit that the claims involved in the appeal are independent Claims 1, 13, 17, and 29 and the rejected dependent Claims 2 – 12, 14 – 16, 18 – 28, and 30 - 40 as a reversal of the rejection of independent Claims 1, 13, 17, and 29 is requested in the present appeal and a reversal of the rejection of dependent Claims 2 – 12, 14 – 16, 18 – 28, and 30 - 40 is also requested based on the reversal of the rejection of the independent claims. Accordingly, the pending claims as included in Appellants' response to the Office Action of July 11, 2007 are attached hereto as Appendix A.

Status of Amendments

No amendment has been filed in the present case in response to the Final Office Action mailed December 5, 2007 (hereinafter "Final Action").

Summary of Claimed Subject Matter

Independent Claim 1 is directed to a method of operating a broadband communication network, comprising establishing a communication flow between a network access terminal and a site using the broadband communication network (Specification, page 14, paragraph 48; FIG. 3, block 300) and allocating a cost of the communication flow between the network access terminal and the site between a first account associated with a user of the network access terminal and a second account associated with an entity other than the user of the network access terminal (Specification, page 14, paragraph 48; FIG. 3, block 310).

Dependent Claim 3 recites: wherein allocating the cost of the communication flow comprises allocating the cost of the communication flow between the first account and the second account based on whether the communication flow is at a base performance level or an enhanced performance level that exceeds the base performance level (Specification, page 14, paragraph 48).

Dependent Claim 4 recites: receiving a request from the network access terminal and/or the site to provide the communication flow at the enhanced performance level (Specification,

page 15, paragraph 50; FIG. 4, block 425) and providing the communication flow at the enhanced performance level (Specification, page 15, paragraph 50; FIG. 4, block 425).

Dependent Claim 5 recites: wherein the cost of the communication flow comprises a base cost for providing the communication flow at a base performance level and an incremental cost, in addition to the base cost, for providing the communication flow at an enhanced performance level, and wherein allocating the cost of the communication flow comprises allocating the base cost of the communication flow between the network access terminal and the site to the first account associated with the user of the network access terminal (Specification, page 16, paragraph 53; FIG. 4, block 440) and allocating the incremental cost of the communication flow between the network access terminal and the site to the second account associated with an entity other than the user of the network access terminal (Specification, page 16, paragraph 53; FIG. 4, block 440).

Dependent Claim 6 recites: wherein the cost of the communication flow comprises a base cost for providing the communication flow at a base performance level and an incremental cost, in addition to the base cost, for providing the communication flow at an enhanced performance level, and wherein allocating the cost of the communication flow comprises: allocating the base cost and the incremental cost of the communication flow between the network access terminal and the site to the first account associated with the user of the network access terminal (Specification, page 16, paragraph 53; FIG. 4, block 440).

Dependent Claim 7 recites: wherein the cost of the communication flow comprises a base cost for providing the communication flow at a base performance level and an incremental cost, in addition to the base cost, for providing the communication flow at an enhanced performance level, and wherein allocating the cost of the communication flow comprises: allocating the base cost and the incremental cost of the communication flow between the network access terminal and the site to the second account associated with an entity other than the user of the network access terminal (Specification, page 16, paragraph 53; FIG. 4, block 440).

Dependent Claim 8 recites: using an authentication mechanism to verify that the network access terminal and/or the site is authorized to modify the performance level of the broadband communication network and/or allocation of the cost of the communication flow (Specification, page 16, paragraph 51; FIG. 4, block 430).

Dependent Claim 9 recites: wherein the request is a first request, the method further comprising receiving a second request from the network access terminal and/or the site to provide the communication flow at the base performance level (Specification, page 16, paragraph 52; FIG. 4, block 435), wherein allocating the cost of the communication flow comprises allocating the cost of the communication flow between the network access terminal and the site between the first account associated with the user of the network access terminal and the second account associated with at the entity other than the user of the network access terminal based on the performance level of the communication flow if the network access terminal and/or the site is authorized to modify the performance level of the broadband communication network and/or allocation of the cost of the communication flow (Specification, page 16, paragraph 53; FIG. 4, block 440).

Independent Claim 13 is directed to a point of presence system, comprising a broadband access node (broadband access node 210 FIG. 2) that is configured to establish a communication flow between a network access terminal and a site using a broadband communication network and a billing system (billing system 220; FIG. 2) that is configured to allocate a cost of the communication flow between the network access terminal and the site between a first account associated with a user of the network access terminal and a second account associated with an entity other than the user of the network access terminal (Specification page 12, paragraph 43).

Dependent Claim 15 recites: wherein the communication flow is operable at a base performance level and an enhanced performance level that exceeds the base performance level (Specification page 12, paragraph 43).

Independent Claim 17 is directed to a system for operating a broadband communication network, comprising means for establishing a communication flow between a network access terminal and a site using the broadband communication network (Specification page 12, paragraph 43) and means for allocating a cost of the communication flow between the network access terminal and the site between a first account associated with a user of the network access terminal and a second account associated with an entity other than the user of the network access terminal (Specification page 12, paragraph 43). The broadband access node 210 of FIG. 2

provides structure for the means for establishing. The billing system 220 of FIG. 2 provides structure for the means for allocating.

Dependent Claim 19 recites: wherein the means for allocating the cost of the communication flow comprises means for allocating the cost of the communication flow between the first account and the second account based on whether the communication flow is at a base performance level or an enhanced performance level that exceeds the base performance level (Specification, page 12, paragraph 43 and page 14, paragraph 48). The billing system 220 of FIG. 2 provides structure for the means for allocating.

Dependent Claim 20 recites: means for receiving a request from the network access terminal and/or the site to provide the communication flow at the enhanced performance level (Specification, page 12, paragraph 43 and page 15, paragraph 50; FIG. 4, block 425) and means for providing the communication flow at the enhanced performance level (Specification, page 12 paragraph 43 and page 15, paragraph 50; FIG. 4, block 425). The performance control server 222 of FIG. 2 provides structure for the means for receiving and the performance control server and broadband access node 210 of FIG. 2 provide structure for the means for providing.

Dependent Claim 20 recites: wherein the cost of the communication flow comprises a base cost for providing the communication flow at a base performance level and an incremental cost, in addition to the base cost, for providing the communication flow at an enhanced performance level (Specification, page 15, paragraph 53; FIG. 4, block 440), and wherein the means for allocating the cost of the communication flow comprises means for allocating the base cost of the communication flow between the network access terminal and the site to the first account associated with the user of the network access terminal (Specification, page 12, paragraph 43 and page 16, paragraph 53; FIG. 4, block 440) and means for allocating the incremental cost of the communication flow between the network access terminal and the site to the second account associated with an entity other than the user of the network access terminal (Specification, page 12, paragraph 43 and page 16, paragraph 53; FIG. 4, block 440). The billing system 220 of FIG. 2 provides structure for the means for allocating.

Dependent Claim 22 recites: wherein the cost of the communication flow comprises a base cost for providing the communication flow at a base performance level and an incremental cost, in addition to the base cost, for providing the communication flow at an enhanced

performance level, and wherein the means for allocating the cost of the communication flow comprises means for allocating the base cost and the incremental cost of the communication flow between the network access terminal and the site to the first account associated with the user of the network access terminal (Specification, page 12, paragraph 43 and page 16, paragraph 53; FIG. 4, block 440). The billing system 220 of FIG. 2 provides structure for the means for allocating.

Dependent Claim 23 recites: wherein the cost of the communication flow comprises a base cost for providing the communication flow at a base performance level and an incremental cost, in addition to the base cost, for providing the communication flow at an enhanced performance level, and wherein the means for allocating the cost of the communication flow comprises means for allocating the base cost and the incremental cost of the communication flow between the network access terminal and the site to the second account associated with an entity other than the user of the network access terminal (Specification, page 12, paragraph 43 and page 16, paragraph 53; FIG. 4, block 440). The billing system 220 of FIG. 2 provides structure for the means for allocating

Dependent Claim 24 recites: means for using an authentication mechanism to verify that the network access terminal and/or the site is authorized to modify the performance level of the broadband communication network and/or allocation of the cost of the communication flow (Specification, page 12, paragraph 43 and page 16, paragraph 51; FIG. 4, block 430). The authentication/accounting server 216 of FIG. 2 provides structure for the means for using.

Dependent Claim 25 recites: wherein the request is a first request, the system further comprising means for receiving a second request from the network access terminal and/or the site to provide the communication flow at the base performance level (Specification, page 12, paragraph 43 and page 16, paragraph 52; FIG. 4, block 435), wherein the means for allocating the cost of the communication flow comprises means for allocating the cost of the communication flow between the network access terminal and the site between the first account associated with the user of the network access terminal and the second account associated with at the entity other than the user of the network access terminal based on the performance level of the communication flow if the network access terminal and/or the site is authorized to modify the performance level of the broadband communication network and/or allocation of the cost of the

communication flow (Specification, page 12, paragraph 43 and page 16, paragraph 53; FIG. 4, block 440). The performance control server 222 of FIG. 2 provides structure for the means for receiving. The billing system 220 of FIG. 2 provides structure for the means for allocating.

Independent Claim 29 is directed to a computer program product for operating a broadband communication network, comprising a computer readable storage medium having computer readable program code embodied therein (Specification, page 8, paragraphs 31 and 32), the computer readable program code comprising computer readable program code configured to establish a communication flow between a network access terminal and a site using the broadband communication network (Specification, page 14, paragraph 48; FIG. 3, block 300) and computer readable program code configured to allocate a cost of the communication flow between the network access terminal and the site between a first account associated with a user of the network access terminal and a second account associated with an entity other than the user of the network access terminal (Specification, page 14, paragraph 48; FIG. 3, block 310).

Dependent Claim 31 recites: wherein the computer readable program code configured to allocate the cost of the communication flow comprises computer readable program code configured to allocate the cost of the communication flow between the first account and the second account based on whether the communication flow is at a base performance level or an enhanced performance level that exceeds the base performance level (Specification, page 14, paragraph 48).

Dependent Claim 32 recites: computer readable program code configured to receive a request from the network access terminal and/or the site to provide the communication flow at the enhanced performance level (Specification, page 15, paragraph 50; FIG. 4, block 425) and computer readable program code configured to provide the communication flow at the enhanced performance level (Specification, page 15, paragraph 50; FIG. 4, block 425).

Dependent Claim 33 recites: wherein the cost of the communication flow comprises a base cost for providing the communication flow at a base performance level and an incremental cost, in addition to the base cost, for providing the communication flow at an enhanced performance level, and wherein the computer readable program code configured to allocate the cost of the communication flow comprises computer readable program code configured to allocate the base cost of the communication flow between the network access terminal and the

site to the first account associated with the user of the network access terminal (Specification, page 16, paragraph 53; FIG. 4, block 440) and computer readable program code configured to allocate the incremental cost of the communication flow between the network access terminal and the site to the second account associated with an entity other than the user of the network access terminal (Specification, page 16, paragraph 53; FIG. 4, block 440).

Dependent Claim 34 recites: wherein the cost of the communication flow comprises a base cost for providing the communication flow at a base performance level and an incremental cost, in addition to the base cost, for providing the communication flow at an enhanced performance level, and wherein the computer readable program code configured to allocate the cost of the communication flow comprises computer readable program code configured to allocate the base cost and the incremental cost of the communication flow between the network access terminal and the site to the first account associated with the user of the network access terminal (Specification, page 16, paragraph 53; FIG. 4, block 440).

Dependent Claim 35 recites: wherein the cost of the communication flow comprises a base cost for providing the communication flow at a base performance level and an incremental cost, in addition to the base cost, for providing the communication flow at an enhanced performance level, and wherein the computer readable program code configured to allocate the cost of the communication flow comprises computer readable program code configured to allocate the base cost and the incremental cost of the communication flow between the network access terminal and the site to the second account associated with an entity other than the user of the network access terminal (Specification, page 16, paragraph 53; FIG. 4, block 440).

Dependent Claim 36 recites: computer readable program code configured to use an authentication mechanism to verify that the network access terminal and/or the site is authorized to modify the performance level of the broadband communication network and/or allocation of the cost of the communication flow (Specification, page 16, paragraph 51; FIG. 4, block 430).

Dependent Claim 37 recites: wherein the request is a first request, the computer program product further comprising computer readable program code configured to receive a second request from the network access terminal and/or the site to provide the communication flow at the base performance level (Specification, page 16, paragraph 52; FIG. 4, block 435), wherein computer readable program code configured to allocate the cost of the communication flow

comprises computer readable program code configured to allocate the cost of the communication flow between the network access terminal and the site between the first account associated with the user of the network access terminal and the second account associated with at the entity other than the user of the network access terminal based on the performance level of the communication flow if the network access terminal and/or the site is authorized to modify the performance level of the broadband communication network and/or allocation of the cost of the communication flow (Specification, page 16, paragraph 53; FIG. 4, block 440).

Grounds of Rejection to be Reviewed on Appeal

1. Independent Claims 1 - 40 stand rejected under 35 U.S.C. §102(b) as being anticipated by U. S. Patent No. 5,970,477 to Roden (hereinafter "Roden"). (Final Action, page 2).
2. Dependent Claims 3, 15, 19, and 31 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Roden in view of U. S. Patent No. 6,775,267 to Kung et al. (hereinafter "Kung"). (Final Action, page 6).

Argument

I. Introduction to 35 U.S.C. §102 /§103 Analysis

Under 35 U.S.C. § 102, "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. § 2131 (quoting *Verdegaal Bros. v. Union Oil Co.*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987)). "Anticipation under 35 U.S.C. § 102 requires the disclosure in a single piece of prior art of each and every limitation of a claimed invention." *Apple Computer Inc. v. Articulate Sys. Inc.*, 57 U.S.P.Q.2d 1057, 1061 (Fed. Cir. 2000). "The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however,

may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." M.P.E.P. § 2112 (citations omitted).

A finding of anticipation further requires that there must be no difference between the claimed invention and the disclosure of the cited reference as viewed by one of ordinary skill in the art. See *Scripps Clinic & Research Foundation v. Genentech Inc.*, 927 F.2d 1565, 1576, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991). In particular, the Court of Appeals for the Federal Circuit held that a finding of anticipation requires absolute identity for each and every element set forth in the claimed invention. See *Trintec Indus. Inc. v. Top-U.S.A. Corp.*, 63 U.S.P.Q.2d 1597 (Fed. Cir. 2002). Additionally, the cited prior art reference must be enabling, thereby placing the allegedly disclosed matter in the possession of the public. *In re Brown*, 329 F.2d 1006, 1011, 141 U.S.P.Q. 245, 249 (C.C.P.A. 1964). Thus, the prior art reference must adequately describe the claimed invention so that a person of ordinary skill in the art could make and use the invention.

A determination under §103 that an invention would have been obvious to someone of ordinary skill in the art is a conclusion of law based on fact. *Panduit Corp. v. Dennison Mfg. Co.* 810 F.2d 1593, 1 U.S.P.Q.2d 1593 (Fed. Cir. 1987), *cert. denied*, 107 S.Ct. 2187. After the involved facts are determined, the decision maker must then make the legal determination of whether the claimed invention as a whole would have been obvious to a person having ordinary skill in the art at the time the invention was unknown, and just before it was made. *Id.* at 1596. The United States Patent and Trademark Office (USPTO) has the initial burden under §103 to establish a *prima facie* case of obviousness. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988).

To establish a *prima facie* case of obviousness, the prior art reference or references when combined must teach or suggest all the recitations of the claims, and there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. M.P.E.P. §2143. A patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR Int'l Co. v. Teleflex Inc.*, 550 U. S. 1, 15 (2007). A corollary principle is that, when the prior art teaches away from combining certain known elements, discovery of a successful means

of combining them is more likely to be unobvious. *Id.* at 12. If a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. *Id.* at 13. A Court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions. *Id.* at 13. When it is necessary for a Court to look at interrelated teachings of multiple patents, the Court must determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. *Id.* at 14.

Appellants respectfully submit that the pending claims are patentable over the cited references for at least the reason that the cited references do not disclose or suggest, at least, all of the recitations of the pending independent claims. The patentability of the pending claims is discussed in detail hereinafter.

II. Section 102 Rejection

A. Independent Claims 1, 13, 17, and 29 are Patentable

Independent Claims 1, 13, 17, and 29 stand rejected under 35 U.S.C. §102(b) as being anticipated by Roden. (Final Action, page 2). Independent Claim 1 is directed to a method of operating a broadband communication network, and recites:

establishing a communication flow between a network access terminal and a site using the broadband communication network; and

allocating a cost of the communication flow between the network access terminal and the site between a first account associated with a user of the network access terminal and a second account associated with an entity other than the user of the network access terminal. (Emphasis added).

Independent Claims 17 and 29 include similar recitations. Independent Claim 13 is directed to a point of presence system, and recites:

a broadband access node that is configured to establish a communication flow between a network access terminal and a site using a broadband communication network; and

a billing system that is configured to allocate a cost of the communication flow between the network access terminal and the site between a first account

associated with a user of the network access terminal and a second account associated with an entity other than the user of the network access terminal.
(Emphasis added).

Independent Claims 1, 13, 17, and 29 include recitations directed to allocating a cost of a communication flow in a broadband communication network between a first account associated with a user of a network access terminal and a second account associated with another entity.

Appellants acknowledge that Roden describes allocating costs between different entities in a narrowband network. (Roden, col. 8, line 43 - col. 10, line 3). In sharp contrast with the recitations of independent Claims 1, 13, 17, and 29, however, Roden does not disclose or suggest allocating a cost of a communication flow between an account associated with a user of a network access terminal and a second account associated with another entity in a broadband communication network. As shown in FIG. 2 of Roden, a user accesses an Internet site 18 through a modem pool 32, which provides a narrowband connection. By contrast, as shown in FIG. 2 of the present Specification, a broadband access node 210 may provide a user with a broadband connection to access an Internet site 208.

In response to this argument, the Final Action states "Roden continues teaching a method and system for providing an end-user with Internet-access (broadband) in column 6, lines 26 and 27." (Final Action, page 8). It appears that the Final Action is equating Internet access with a broadband communication connection. The Internet can be accessed through a broadband connection, such as that provided by DSL or cable modem technology, for example, and the Internet can also be accessed through a narrowband connection, such as that provided by dial-up access over a modem. Appellants agree that Roden teaches allocating costs for narrowband Internet access between different entities. Appellants submit, however, that Roden provides no teaching with respect to allocating costs for broadband Internet access between different entities. Accordingly, Appellants continue to maintain that Roden fails to disclose or suggest, at least, allocating a cost of a communication flow between an account associated with a user of a network access terminal and a second account associated with another entity in a broadband communication network.

For at least the foregoing reasons, Appellants submit that independent Claims 1, 13, 17, and 29 are patentable over the cited reference and that rejected dependent Claims 2 – 12, 14 – 16,

18 – 28, and 30 - 40 are patentable, at least, by virtue of their depending from an allowable claim. Accordingly, Appellants respectfully request that the rejection of Claims 1 - 40 be reversed based on the failure of the Examiner to establish a prima facie case of anticipation under 35 U.S.C. §102 for at least these reasons.

B. Dependent Claims 3 – 9, 19 – 25, and 31 – 37 are Patentable

Dependent Claims 4 - 9, 20 - 25, and 32 - 37 stand rejected under 35 U.S.C. §102(b) as being anticipated by Roden. (Final Action, page 2). The Final Action acknowledges that Claims 3, 19, and 31 include recitations that are not disclosed by Roden. (Final Action, page 7) Accordingly, Appellants respectfully request that the rejection of Claims 3, 19, and 31 and Claims 4 – 9, 20 – 25, and 32 – 37, which depend therefrom, be reversed based on the failure of the Examiner to establish a prima facie case of anticipation under 35 U.S.C. §102 for at least these additional reasons.

III. Section 103 Rejections

A. Dependent Claims 3, 15, 19, and 31 are Patentable

Dependent Claims 3, 15, 19, and 31 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Roden in view of Kung. (Final Action, page 6). The Final Action acknowledges that Roden does not disclose or suggest allocating the cost of a communication flow between first and second accounts based on whether the communication flow is at a base performance level or an enhanced performance level, but alleges that Kung provides the missing teachings. (Final Action, page 7). Appellants respectfully disagree. Kung describes billing a customer for a communication service based on the level and/or quality of the service that is provided. (Kung, col. 33, line 49 - col. 34, line 34). Kung does not disclose or suggest allocating costs between the end user and another party, such as the service provider, based on the level and/or quality of service provided to the end user. Instead, Kung describes billing all costs to the end user with the amount being based on the level and/or quality of service actually provided. Appellants submit that the combination of Roden and Kung would result in a system in which the costs of a narrowband communication flow could be allocated between a user and

another party and the cost differentials based on whether the communication flow is at a base performance level or an enhanced performance level would be allocated solely to the end user based on the actual level and/or quality of service delivered to the end user.

In response to this argument, the Final Action states that Kung teaches a method of providing a user with a choice between a base performance level and an enhanced performance level for broadband access along with billing for the communication service. (Final Action, page 8). Appellants do not disagree that Kung teaches billing for a communication service based on the level and/or quality of service provided. Appellants submit, however, that Kung teaches that all the costs for the communication service are billed to the end user. Kung fails to disclose or suggest allocating costs between different entities based on whether the communication service is provided at a base or enhanced performance level.

Accordingly, Appellants respectfully request that the rejection of Claims 3, 15, 19, and 31 be reversed based on the failure of the Examiner to establish a prima facie case of obviousness under 35 U.S.C. §103 for at least these reasons.

IV. Conclusion

In summary, Appellants respectfully submits that, with respect to Claims 1 - 40, the cited references do not teach all of the recitations of the claims. Accordingly, Appellants respectfully request reversal of the rejection of Claims 1 - 40 based on the cited references.

Respectfully submitted,



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APPENDIX A

1. (Original) A method of operating a broadband communication network, comprising:
establishing a communication flow between a network access terminal and a site using the broadband communication network; and
allocating a cost of the communication flow between the network access terminal and the site between a first account associated with a user of the network access terminal and a second account associated with an entity other than the user of the network access terminal.

2. (Original) The method of Claim 1, wherein allocating the cost of the communication flow comprises:
allocating the cost of the communication flow between the network access terminal and the site between the first account associated with the user of the network access terminal and the second account associated with the entity other than the user of the network access terminal based on a performance level of the communication flow.

3. (Original) The method of Claim 2, wherein allocating the cost of the communication flow comprises:
allocating the cost of the communication flow between the first account and the second account based on whether the communication flow is at a base performance level or an enhanced performance level that exceeds the base performance level.

4. (Original) The method of Claim 3, further comprising:
receiving a request from the network access terminal and/or the site to provide the communication flow at the enhanced performance level; and
providing the communication flow at the enhanced performance level.

5. (Original) The method of Claim 4, wherein the cost of the communication flow comprises a base cost for providing the communication flow at a base performance level and an

incremental cost, in addition to the base cost, for providing the communication flow at an enhanced performance level, and wherein allocating the cost of the communication flow comprises:

allocating the base cost of the communication flow between the network access terminal and the site to the first account associated with the user of the network access terminal; and

allocating the incremental cost of the communication flow between the network access terminal and the site to the second account associated with an entity other than the user of the network access terminal.

6. (Original) The method of Claim 4, wherein the cost of the communication flow comprises a base cost for providing the communication flow at a base performance level and an incremental cost, in addition to the base cost, for providing the communication flow at an enhanced performance level, and wherein allocating the cost of the communication flow comprises:

allocating the base cost and the incremental cost of the communication flow between the network access terminal and the site to the first account associated with the user of the network access terminal.

7. (Original) The method of Claim 4, wherein the cost of the communication flow comprises a base cost for providing the communication flow at a base performance level and an incremental cost, in addition to the base cost, for providing the communication flow at an enhanced performance level, and wherein allocating the cost of the communication flow comprises:

allocating the base cost and the incremental cost of the communication flow between the network access terminal and the site to the second account associated with an entity other than the user of the network access terminal.

8. (Previously presented) The method of Claim 4, further comprising:

using an authentication mechanism to verify that the network access terminal and/or the site is authorized to modify the performance level of the broadband communication network and/or allocation of the cost of the communication flow.

9. (Original) The method of Claim 8, wherein the request is a first request, the method further comprising:

receiving a second request from the network access terminal and/or the site to provide the communication flow at the base performance level; and wherein allocating the cost of the communication flow comprises:

allocating the cost of the communication flow between the network access terminal and the site between the first account associated with the user of the network access terminal and the second account associated with at the entity other than the user of the network access terminal based on the performance level of the communication flow if the network access terminal and/or the site is authorized to modify the performance level of the broadband communication network and/or allocation of the cost of the communication flow.

10. (Original) The method of Claim 2, wherein the performance level is based on at least one of bandwidth of the communication flow, duration of the communication flow, latency associated with the communication flow, jitter associated with the communication flow, dropped packets associated with the communication flow, quality of service (QoS) associated with the communication flow, rate limit associated with the communication flow, traffic shaping associated with the communication flow, and priority of the communication flow.

11. (Original) The method of Claim 1, wherein the entity is associated with the site.

12. (Original) The method of Claim 1, wherein the entity is associated with a third party that is not associated with the site.

13. (Original) A point of presence system, comprising:

a broadband access node that is configured to establish a communication flow between a network access terminal and a site using a broadband communication network; and

a billing system that is configured to allocate a cost of the communication flow between the network access terminal and the site between a first account associated with a user of the network access terminal and a second account associated with an entity other than the user of the network access terminal.

14. (Original) The point of presence system of Claim 13, further comprising:
a performance control system that is configured to adjust a performance level of the communication flow; and

wherein the billing system is further configured to allocate the cost of the communication flow between the network access terminal and the site between the first account associated with the user of the network access terminal and the second account associated with the entity other than the user of the network access terminal based on the performance level.

15. (Original) The point of presence system of Claim 14, wherein the communication flow is operable at a base performance level and an enhanced performance level that exceeds the base performance level.

16. (Original) The point of presence system of Claim 14, wherein the performance level is based on at least one of bandwidth of the communication flow, duration of the communication flow, latency associated with the communication flow, jitter associated with the communication flow, dropped packets associated with the communication flow, quality of service (QoS) associated with the communication flow, rate limit associated with the communication flow, traffic shaping associated with the communication flow, and priority of the communication flow.

17. (Original) A system for operating a broadband communication network, comprising:

means for establishing a communication flow between a network access terminal and a site using the broadband communication network; and

means for allocating a cost of the communication flow between the network access terminal and the site between a first account associated with a user of the network access terminal and a second account associated with an entity other than the user of the network access terminal.

18. (Original) The system of Claim 17, wherein the means for allocating the cost of the communication flow comprises:

means for allocating the cost of the communication flow between the network access terminal and the site between the first account associated with the user of the network access terminal and the second account associated with the entity other than the user of the network access terminal based on a performance level of the communication flow.

19. (Original) The system of Claim 18, wherein the means for allocating the cost of the communication flow comprises:

means for allocating the cost of the communication flow between the first account and the second account based on whether the communication flow is at a base performance level or an enhanced performance level that exceeds the base performance level.

20. (Original) The system of Claim 19, further comprising:

means for receiving a request from the network access terminal and/or the site to provide the communication flow at the enhanced performance level; and

means for providing the communication flow at the enhanced performance level.

21. (Original) The system of Claim 20, wherein the cost of the communication flow comprises a base cost for providing the communication flow at a base performance level and an incremental cost, in addition to the base cost, for providing the communication flow at an enhanced performance level, and wherein the means for allocating the cost of the communication flow comprises:

means for allocating the base cost of the communication flow between the network access terminal and the site to the first account associated with the user of the network access terminal; and

means for allocating the incremental cost of the communication flow between the network access terminal and the site to the second account associated with an entity other than the user of the network access terminal.

22. (Original) The system of Claim 20, wherein the cost of the communication flow comprises a base cost for providing the communication flow at a base performance level and an incremental cost, in addition to the base cost, for providing the communication flow at an enhanced performance level, and wherein the means for allocating the cost of the communication flow comprises:

means for allocating the base cost and the incremental cost of the communication flow between the network access terminal and the site to the first account associated with the user of the network access terminal.

23. (Original) The system of Claim 20, wherein the cost of the communication flow comprises a base cost for providing the communication flow at a base performance level and an incremental cost, in addition to the base cost, for providing the communication flow at an enhanced performance level, and wherein the means for allocating the cost of the communication flow comprises:

means for allocating the base cost and the incremental cost of the communication flow between the network access terminal and the site to the second account associated with an entity other than the user of the network access terminal.

24. (Previously presented) The system of Claim 20, further comprising:

means for using an authentication mechanism to verify that the network access terminal and/or the site is authorized to modify the performance level of the broadband communication network and/or allocation of the cost of the communication flow.

25. (Original) The system of Claim 24, wherein the request is a first request, the system further comprising:

means for receiving a second request from the network access terminal and/or the site to provide the communication flow at the base performance level; and wherein the means for allocating the cost of the communication flow comprises:

means for allocating the cost of the communication flow between the network access terminal and the site between the first account associated with the user of the network access terminal and the second account associated with at the entity other than the user of the network access terminal based on the performance level of the communication flow if the network access terminal and/or the site is authorized to modify the performance level of the broadband communication network and/or allocation of the cost of the communication flow.

26. (Original) The system of Claim 18, wherein the performance level is based on at least one of bandwidth of the communication flow, duration of the communication flow, latency associated with the communication flow, jitter associated with the communication flow, dropped packets associated with the communication flow, quality of service (QoS) associated with the communication flow, rate limit associated with the communication flow, traffic shaping associated with the communication flow, and priority of the communication flow.

27. (Original) The system of Claim 17 wherein the entity is associated with the site.

28. (Original) The system of Claim 17, wherein the entity is associated with a third party that is not associated with the site.

29. (Original) A computer program product for operating a broadband communication network, comprising:

a computer readable storage medium having computer readable program code embodied therein, the computer readable program code comprising:

computer readable program code configured to establish a communication flow between a network access terminal and a site using the broadband communication network; and

computer readable program code configured to allocate a cost of the communication flow between the network access terminal and the site between a first account associated with a user of the network access terminal and a second account associated with an entity other than the user of the network access terminal.

30. (Original) The computer program product of Claim 29, wherein the computer readable program code configured to allocate the cost of the communication flow comprises:

computer readable program code configured to allocate the cost of the communication flow between the network access terminal and the site between the first account associated with the user of the network access terminal and the second account associated with the entity other than the user of the network access terminal based on a performance level of the communication flow.

31. (Original) The computer program product of Claim 30, wherein the computer readable program code configured to allocate the cost of the communication flow comprises:

computer readable program code configured to allocate the cost of the communication flow between the first account and the second account based on whether the communication flow is at a base performance level or an enhanced performance level that exceeds the base performance level.

32. (Original) The computer program product of Claim 31, further comprising:

computer readable program code configured to receive a request from the network access terminal and/or the site to provide the communication flow at the enhanced performance level; and

computer readable program code configured to provide the communication flow at the enhanced performance level.

33. (Original) The computer program product of Claim 32, wherein the cost of the communication flow comprises a base cost for providing the communication flow at a base performance level and an incremental cost, in addition to the base cost, for providing the

communication flow at an enhanced performance level, and wherein the computer readable program code configured to allocate the cost of the communication flow comprises:

computer readable program code configured to allocate the base cost of the communication flow between the network access terminal and the site to the first account associated with the user of the network access terminal; and

computer readable program code configured to allocate the incremental cost of the communication flow between the network access terminal and the site to the second account associated with an entity other than the user of the network access terminal.

34. (Original) The computer program product of Claim 32, wherein the cost of the communication flow comprises a base cost for providing the communication flow at a base performance level and an incremental cost, in addition to the base cost, for providing the communication flow at an enhanced performance level, and wherein the computer readable program code configured to allocate the cost of the communication flow comprises:

computer readable program code configured to allocate the base cost and the incremental cost of the communication flow between the network access terminal and the site to the first account associated with the user of the network access terminal.

35. (Original) The computer program product of Claim 32, wherein the cost of the communication flow comprises a base cost for providing the communication flow at a base performance level and an incremental cost, in addition to the base cost, for providing the communication flow at an enhanced performance level, and wherein the computer readable program code configured to allocate the cost of the communication flow comprises:

computer readable program code configured to allocate the base cost and the incremental cost of the communication flow between the network access terminal and the site to the second account associated with an entity other than the user of the network access terminal.

36. (Previously presented) The computer program product of Claim 32, further comprising:

computer readable program code configured to use an authentication mechanism to verify that the network access terminal and/or the site is authorized to modify the performance level of the broadband communication network and/or allocation of the cost of the communication flow.

37. (Original) The computer program product of Claim 36, wherein the request is a first request, the computer program product further comprising:

computer readable program code configured to receive a second request from the network access terminal and/or the site to provide the communication flow at the base performance level; and wherein computer readable program code configured to allocate the cost of the communication flow comprises:

computer readable program code configured to allocate the cost of the communication flow between the network access terminal and the site between the first account associated with the user of the network access terminal and the second account associated with at the entity other than the user of the network access terminal based on the performance level of the communication flow if the network access terminal and/or the site is authorized to modify the performance level of the broadband communication network and/or allocation of the cost of the communication flow.

38. (Original) The computer program product of Claim 30, wherein the performance level is based on at least one of bandwidth of the communication flow, duration of the communication flow, latency associated with the communication flow, jitter associated with the communication flow, dropped packets associated with the communication flow, quality of service (QoS) associated with the communication flow, rate limit associated with the communication flow, traffic shaping associated with the communication flow, and priority of the communication flow.

39. (Original) The computer program product of Claim 29 wherein the entity is associated with the site.

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40. (Original) The computer program product of Claim 29, wherein the entity is associated with a third party that is not associated with the site.

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APPENDIX B – EVIDENCE APPENDIX

None

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APPENDIX C – RELATED PROCEEDINGS APPENDIX

None.